

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1304**

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**Introduced by Assembly Member Waldron**

February 22, 2013

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An act to ~~amend~~ add Section 23036 of 18627 to the Revenue and Taxation Code, relating to taxation.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1304, as amended, Waldron. Taxation: ~~corporation taxes: credits.~~  
*Franchise Tax Board: notices.*

The *Personal Income Tax Law* and *Corporation Tax Law* ~~imposes a tax~~ impose taxes according to, or measured by, income derived from or attributable to sources within this state and authorizes various credits against the taxes imposed by that law. ~~That law provides that, in the case of a taxpayer that is eligible for more than one credit, the credits are allowable in a specified order~~ Those laws are administered by the *Franchise Tax Board* and require taxpayers subject to the taxes imposed by those laws to submit a return to the *Franchise Tax Board*.

This bill would ~~make technical, nonsubstantive changes to the provision that provides for the ordering of tax credits~~ require the *Franchise Tax Board*, when it does not receive a timely filed return from specified taxpayers, to send a notice to those taxpayers, within 60 days of the due date of the return, containing specified information, requesting a return, amended return, or an estimate of the taxpayer's taxable income.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 18627 is added to the Revenue and  
2     Taxation Code, to read:

3     18627. If the Franchise Tax Board does not receive a timely  
4     filed return from a taxpayer subject to Part 11 (commencing with  
5     Section 23001) or a taxpayer that is a “S” corporation, limited  
6     liability company, or partnership subject to Part 10 (commencing  
7     with Section 17001), the Franchise Tax Board shall send a notice  
8     to the taxpayer, within 60 days of the due date of the return,  
9     requesting a return, an amended return, or an estimate of taxable  
10    income. The notice sent pursuant to this section may include a  
11    proposal of the amount of tax, interest, and penalties due.

12    ~~SECTION 1. Section 23036 of the Revenue and Taxation Code~~  
13    ~~is amended to read:~~

14    ~~23036. (a) (1) The term “tax” includes any of the following:~~

15    ~~(A) The tax imposed under Chapter 2 (commencing with Section~~  
16    ~~23101).~~

17    ~~(B) The tax imposed under Chapter 3 (commencing with Section~~  
18    ~~23501).~~

19    ~~(C) The tax on unrelated business taxable income, imposed~~  
20    ~~under Section 23731.~~

21    ~~(D) The tax on an “S” corporation imposed under Section 23802.~~

22    ~~(2) The term “tax” does not include any amount imposed under~~  
23    ~~paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)~~  
24    ~~of subdivision (f) of Section 24667.~~

25    ~~(b) For purposes of Article 5 (commencing with Section 18661)~~  
26    ~~of Chapter 2, Article 3 (commencing with Section 19031) of~~  
27    ~~Chapter 4, Article 6 (commencing with Section 19101) of Chapter~~  
28    ~~4, and Chapter 7 (commencing with Section 19501) of Part 10.2,~~  
29    ~~and for purposes of Sections 18601, 19001, and 19005, the term~~  
30    ~~“tax” also includes all of the following:~~

31    ~~(1) The tax on limited partnerships, imposed under Section~~  
32    ~~17935, the tax on limited liability companies, imposed under~~  
33    ~~Section 17941, and the tax on registered limited liability~~  
34    ~~partnerships and foreign limited liability partnerships imposed~~  
35    ~~under Section 17948.~~

36    ~~(2) The alternative minimum tax imposed under Chapter 2.5~~  
37    ~~(commencing with Section 23400).~~

1     ~~(3) The tax on built-in gains of an “S” corporation, imposed~~  
2     ~~under Section 23809.~~

3     ~~(4) The tax on excess passive investment income of an “S”~~  
4     ~~corporation, imposed under Section 23811.~~

5     ~~(e) Notwithstanding any other provision of this part, credits are~~  
6     ~~allowed against the “tax” in the following order:~~

7         ~~(1) Credits that do not contain carryover provisions.~~

8         ~~(2) Credits that, when the credit exceeds the “tax,” allow the~~  
9         ~~excess to be carried over to offset the “tax” in succeeding taxable~~  
10        ~~years, except for those credits that are allowed to reduce the “tax”~~  
11        ~~below the tentative minimum tax, as defined by Section 23455.~~  
12        ~~The order of credits within this paragraph shall be determined by~~  
13        ~~the Franchise Tax Board.~~

14        ~~(3) The minimum tax credit allowed by Section 23453.~~

15        ~~(4) Credits that are allowed to reduce the “tax” below the~~  
16        ~~tentative minimum tax, as defined by Section 23455.~~

17        ~~(5) Credits for taxes withheld under Section 18662.~~

18     ~~(d) Notwithstanding any other provision of this part, each of~~  
19     ~~the following applies:~~

20        ~~(1) No credit may reduce the “tax” below the tentative minimum~~  
21        ~~tax (as defined by paragraph (1) of subdivision (a) of Section~~  
22        ~~23455), except the following credits:~~

23           ~~(A) The credit allowed by former Section 23601 (relating to~~  
24           ~~solar energy).~~

25           ~~(B) The credit allowed by former Section 23601.4 (relating to~~  
26           ~~solar energy).~~

27           ~~(C) The credit allowed by former Section 23601.5 (relating to~~  
28           ~~solar energy).~~

29           ~~(D) The credit allowed by Section 23609 (relating to research~~  
30           ~~expenditures).~~

31           ~~(E) The credit allowed by former Section 23609.5 (relating to~~  
32           ~~clinical testing expenses).~~

33           ~~(F) The credit allowed by Section 23610.5 (relating to~~  
34           ~~low-income housing).~~

35           ~~(G) The credit allowed by former Section 23612 (relating to~~  
36           ~~sales and use tax credit).~~

37           ~~(H) The credit allowed by Section 23612.2 (relating to enterprise~~  
38           ~~zone sales or use tax credit).~~

39           ~~(I) The credit allowed by former Section 23612.6 (relating to~~  
40           ~~Los Angeles Revitalization Zone sales tax credit).~~

1     ~~(J) The credit allowed by former Section 23622 (relating to~~  
2     ~~enterprise zone hiring credit).~~

3     ~~(K) The credit allowed by Section 23622.7 (relating to enterprise~~  
4     ~~zone hiring credit).~~

5     ~~(L) The credit allowed by former Section 23623 (relating to~~  
6     ~~program area hiring credit).~~

7     ~~(M) The credit allowed by former Section 23623.5 (relating to~~  
8     ~~Los Angeles Revitalization Zone hiring credit).~~

9     ~~(N) The credit allowed by former Section 23625 (relating to~~  
10    ~~Los Angeles Revitalization Zone hiring credit).~~

11    ~~(O) The credit allowed by Section 23633 (relating to targeted~~  
12    ~~tax area sales or use tax credit).~~

13    ~~(P) The credit allowed by Section 23634 (relating to targeted~~  
14    ~~tax area hiring credit).~~

15    ~~(Q) The credit allowed by Section 23649 (relating to qualified~~  
16    ~~property).~~

17    ~~(2) No credit against the tax may reduce the minimum franchise~~  
18    ~~tax imposed under Chapter 2 (commencing with Section 23101).~~

19    ~~(e) Any credit which is partially or totally denied under~~  
20    ~~subdivision (d) is allowed to be carried over to reduce the “tax”~~  
21    ~~in the following year, and succeeding years if necessary, if the~~  
22    ~~provisions relating to that credit include a provision to allow a~~  
23    ~~carryover of the unused portion of that credit.~~

24    ~~(f) Unless otherwise provided, any remaining carryover from a~~  
25    ~~credit that has been repealed or made inoperative is allowed to be~~  
26    ~~carried over under the provisions of that section as it read~~  
27    ~~immediately prior to being repealed or becoming inoperative.~~

28    ~~(g) Unless otherwise provided, if two or more taxpayers share~~  
29    ~~in costs that would be eligible for a tax credit allowed under this~~  
30    ~~part, each taxpayer is eligible to receive the tax credit in proportion~~  
31    ~~to his or her respective share of the costs paid or incurred.~~

32    ~~(h) Unless otherwise provided, in the case of an “S” corporation,~~  
33    ~~any credit allowed by this part is computed at the “S” corporation~~  
34    ~~level, and any limitation on the expenses qualifying for the credit~~  
35    ~~or limitation upon the amount of the credit applies to the “S”~~  
36    ~~corporation and to each shareholder.~~

37    ~~(i) (1) With respect to any taxpayer that directly or indirectly~~  
38    ~~owns an interest in a business entity that is disregarded for tax~~  
39    ~~purposes pursuant to Section 23038 and any regulations thereunder,~~  
40    ~~the amount of any credit or credit carryforward allowable for any~~

1 taxable year attributable to the disregarded business entity is limited  
2 in accordance with paragraphs (2) and (3):

3 (2) ~~The amount of any credit otherwise allowed under this part,~~  
4 ~~including any credit carryover from prior years, that may be applied~~  
5 ~~to reduce the taxpayer's "tax," as defined in subdivision (a), for~~  
6 ~~the taxable year is limited to an amount equal to the excess of the~~  
7 ~~taxpayer's regular tax (as defined in Section 23455), determined~~  
8 ~~by including income attributable to the disregarded business entity~~  
9 ~~that generated the credit or credit carryover, over the taxpayer's~~  
10 ~~regular tax (as defined in Section 23455), determined by excluding~~  
11 ~~the income attributable to that disregarded business entity. No~~  
12 ~~credit is allowed if the taxpayer's regular tax (as defined in Section~~  
13 ~~23455), determined by including the income attributable to the~~  
14 ~~disregarded business entity is less than the taxpayer's regular tax~~  
15 ~~(as defined in Section 23455), determined by excluding the income~~  
16 ~~attributable to the disregarded business entity.~~

17 (3) ~~If the amount of a credit allowed pursuant to the section~~  
18 ~~establishing the credit exceeds the amount allowable under this~~  
19 ~~subdivision in any taxable year, the excess amount may be carried~~  
20 ~~over to subsequent taxable years pursuant to subdivisions (d), (e),~~  
21 ~~and (f).~~

22 (j) (1) ~~Unless otherwise specifically provided, in the case of a~~  
23 ~~taxpayer that is a partner or shareholder of an eligible pass-thru~~  
24 ~~entity described in paragraph (2), any credit passed through to the~~  
25 ~~taxpayer in the taxpayer's first taxable year beginning on or after~~  
26 ~~the date the credit is no longer operative may be claimed by the~~  
27 ~~taxpayer in that taxable year, notwithstanding the repeal of the~~  
28 ~~statute authorizing the credit prior to the close of that taxable year.~~

29 (2) ~~For purposes of this subdivision, "eligible pass-thru entity"~~  
30 ~~means any partnership or "S" corporation that files its return on a~~  
31 ~~fiscal year basis pursuant to Section 18566, and that is entitled to~~  
32 ~~a credit pursuant to this part for the taxable year that begins during~~  
33 ~~the last year a credit is operative.~~

34 (3) ~~This subdivision applies to credits that become inoperative~~  
35 ~~on or after the operative date of the act adding this subdivision.~~